

STATE OF TENNESSEE

-VS-

DONALD BROOKS

No. 118061, 118079

In the Criminal Court of
Hamilton County, Tennessee
Division I

MOTION FOR NEW TRIAL

[Filed April 7, 1970]

Comes the defendant and moves the Court reverse the verdict of the Petit Jury in the aforestyled cause and to grant him a new trial on the following grounds:

1. The evidence preponderates against the verdict.
2. The Honorable Court erred in refusing to grant defendant's motion to suppress evidence based on an alleged coerced confession by the defendant which was given to the Detectives of the Chattanooga Police Department.
3. The Honorable Court erred in refusing to sustain defendant's motion to suppress evidence based on the alleged suggestiveness of the line-up in which he was placed and identified by the prosecuting witnesses.
4. The Honorable Court erred in refusing to grant a mistrial based on Assistant Chief James M. Davis' reference to another case in which defendant was charged.
5. The Honorable Court erred in failing to grant a mistrial when Chief Robert Cornish referred to photographs of the defendant shown to the victim as mug shots.
6. The Honorable Court erred in refusing to allow defendant to be placed on the witness stand after other witnesses had testified in his behalf as said Tennessee Statute requiring defendant to be first witness to testify is unconstitutional.
7. The Honorable Court erred in refusing defendant's request to declare Hamilton County Chief of Detectives Robert Cornish a hostile witness and allow defendant to cross examine him as he was subpoenaed by the State and not called as a witness.
8. The Honorable Court erred in instructing the jury on what constitutes the indeterminate sentence law in the State of Tennessee and by overruling defendant's special request to strike said instruction from the charge.

9. The Honorable Court erred in failing to give to the jury defendant's special request on requesting identification beyond a reasonable doubt.

/s/ Jerry H. Summers 4-7-70

JERRY H. SUMMERS

Attorney for Defendant

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
APPEAL IN ERROR FROM THE CRIMINAL COURT OF HAMILTON
COUNTY—HONORABLE CAMPBELL CARDEN, JUDGE

DONALD L. BROOKS,
Plaintiff-in-Error

vs.

STATE OF TENNESSEE
Defendant-in-Error

No. 205

(Robbery by the use of
a deadly weapon).

For Plaintiff-in-Error:

JERRY H. SUMMERS
Attorney at Law
206 Professional Building
Chattanooga, Tennessee

For Defendant in Error

DAVID M. PACK
Attorney General
Nashville, Tennessee
THOMAS E. FOX
Deputy Attorney General
Nashville, Tennessee
EDWARD E. DAVIS
District Attorney General
Chattanooga, Tennessee
DONNIE WAYNE POOLE
Ass't. Attorney General
Chattanooga, Tennessee

JUDGMENT AFFIRMED:

JOHN A. MITCHELL, *Judge*
Opinion Filed: May 5, 1971

OPINION

Donald L. Brooks, who will be referred to as the defendant or by name has appealed his conviction of robbery by the use of a deadly weapon and a sentence of ten (10) years in the penitentiary, and carrying a pistol and a fine of \$50.00 and eleven months and twenty-nine days in the workhouse from the Criminal Court of Hamilton County, Tennessee, Honorable Campbell Carden Judge presiding.

The Grand Jury in Hamilton County returned two indictments against Donald L. Brooks on December 3, 1969. In number 118061 the indictment charged robbery of W. R.

Doremus of \$11,327.00 belonging to Red Food Stores, by use of a deadly weapon, to-wit: a pistol on October 30, 1969 and in number 118079 the indictment charged unlawfully carrying a pistol on the same date.

On December 15, 1969 the trial court adjudged the defendant indigent and appointed Honorable Jerry H. Summers, Attorney at Law to represent him.

The defendant was tried on the two indictments on April 1, 1970, the trial jury found the defendant guilty of armed robbery and imposed a sentence of ten (10) years in the penitentiary, and found him guilty of carrying a pistol and fixed the punishment at a fine of \$50.00 and a sentence of eleven months and twenty-nine days in the workhouse, upon which the trial judge pronounced judgment.

His motion for a new trial being heard and overruled the defendant appealed and assigned the following errors:

1. The defendant's confession should not have been permitted into evidence because it was coerced and improperly obtained by the police officers.

2. The Trial Court was in error in refusing to sustain defendant's Motion to Suppress Evidence based on the invalid identification and suggestiveness of the lineup in which he was placed and identified by prosecuting witness Doremus.

3. The defendant should not have been denied the privilege of testifying because he did not choose to testify as the first witness in his own behalf.

4. The trial judge should have given the jury a special request to the effect that they should be satisfied beyond a reasonable doubt as to the identity of the defendant, and

5. The evidence preponderates against the verdict and in favor of the innocence of the accused.

A brief review of the facts is necessary to properly evaluate the assignments of error.

On October 30, 1969 about 7:00 p.m. William R. Doremus, manager of Red Food Stores, a corporation, was robbed of about \$11,327.00 in the place of business of his employer. He was at the safe apparently making arrangements for putting the money away for the day when a man armed with a pistol drawn, approached him and demanded the money. This "stunned" Mr. Doremus. The robber "grabbed" part of the money and Mr. Doremus handed him part of it. Mr.

Doremus testified he was in fear, that he did not know what to do. The robber took the money and went out the door. Mr. Doremus gave the officers a description of the man that robbed him. Three weeks later the officers told him they had a man under arrest who confessed he committed the robbery. Mr. Doremus went down to the Hamilton County Jail and picked the defendant out of a lineup of five or six individuals. They had told Mr. Doremus that the man was in the line-up.

At the trial Mr. Doremus pointed out the defendant in the courtroom and said he was sure he was the man who robbed him. He said the defendant was in the store from a minute to two minutes during the robbery. He testified there were 25 or 30 people in the store. About an hour after the robbery he was shown some pictures but was unable to identify the defendant from the pictures. He said at that time he was excited, nervous or something. The victim said the officer told him he had the boy. Mr. Doremus testified that the robber was about a foot from him during the robbery.

James M. Davis, Assistant Chief of Detectives of the Chattanooga Police Department testified he had known the defendant Donald L. Brooks all his life. That he talked to the defendant in the Narcotics Office of the City on November 14, 1969, about the armed robbery of the Red Food Store. That he warned the defendant of his rights and told him he wanted to talk to him, and the defendant signed a waiver of his rights which was made State's exhibit no. 1. The witness then read the warning and the waiver of his rights to the court and jury, in which the defendant's rights were explained to him under the Miranda rule and the defendant said he understood the warning, that he did not want a lawyer at that time and was willing to make a statement.

The defendant made a detailed confession which was reduced to writing and signed by the defendant and by detective J. M. Davis, as a Notary Public and detective H. R. Outlaw. In confession the defendant said he got out of the car about a half block from the Red Food Store, went into the store, saw a man with a safe door open and money on top of the safe. That he drew a derringer pistol from his pocket and told the man to hand him the money, when the victim failed to do so he grabbed the money and ran out the front door and to the rear of the building where he hid. Then

later walked home, called a cab and went to the Read House where he counted the money and spent the night. That he counted to \$10,000.00 and quit, that he did not know how much more there was. The next morning he took a plane to New Orleans where he stayed about 10 days and spent the money. On November 8, 1969 he caught a plane back to Chattanooga.

Chief Davis testified there was no questioning of the defendant when he was first arrested. That five minutes after he got there he told them all about it, even in the car before they got there. That the defendant could have called an attorney if he wanted one, he used the phone.

John David Gilstrap introduced on behalf of the defendant testified he was 23 years old. That he was 5'11" and weighed 178 pounds and he was in the Hamilton County Jail under a conviction of armed robbery and a sentence of fifteen years, pending an appeal. That he had been convicted of burglary in 1965. That he was a participant in a line-up involving the Red Food Store robbery in which line-up Donald Brooks was also included. That there were six people in the line-up, that they were Jesse Quinn, David Petty, Billy Easterly, William C. Beattie, Donald Brooks and himself. That he was wearing penitentiary clothes. He had come back from Brushy Mountain. A man and woman viewed the line-up, the woman picked Jessie Quinn and the man picked Donald Brooks. They were all taller than Petty and Brooks.

Robert E. Cornish, Chief Detective of Hamilton County Sheriff's Office introduced on behalf of the defendant, testified he participated in the investigation on October 30, of a hold up at Red Food Store and testified in the preliminary hearing, and before the Grand Jury for the State, and subpoenaed for the State in this case but had not testified for the State. That he conducted the lineup in which Mr. Brooks was allegedly identified by Mr. Doremus, that so far as he knew Brooks had not been convicted of any criminal offense. It was stipulated the defendant had no prior convictions.

That Mr. Doremus gave him a description of the person supposed to have held up the Red Food Store. The description was that he was a white male that needed a shave badly, approximately 5'6" to 5'8" tall, wearing a dark jacket, about 20 years old, carried a small pistol. That night he conducted a line-up which did not include Mr. Brooks. Mr. Doremus,

his wife and a teller by the name of Carolyn Correll viewed the line-up. No one picked any of them out. Mr. Doremus was shown a mug-book which did not include Mr. Brook's picture, he did not pick anybody out of it. That he understood Mr. Doremus was shown some pictures which included Mr. Brook's picture and that he was evidently not able to pick Mr. Brook's picture out.

That after Chief Davis told him he had gotten a statement from Brooks, he then put Brooks in a line-up. That he did not know what information was given Mr. Doremus when he was told to come down. Doremus did view a line-up. In the line-up was no. 1 John Gilstrap, age 22, white male 5'11", 180 pounds, no. 2 was Jesse Fay Quinn, age 24, white male 6', 178 pounds, no. 3 was Donald L. Brooks, 19 white male 5'10" no. 4 David L. Petty, age 21, white male 5'10" 150 pounds, no. 5 Billy Ray Easterly, 25 white male, 6'1", 193 pounds, no. 6 William C. Beattie 22, white male, 6' 165 pounds. They were prisoners from the Hamilton County Jail selected as near as possible to Brooks height, weight and age.

Mr. Doremus' wife viewed the line-up but did not pick out anyone.

On cross-examination Chief Cornish testified he advised the defendant Brooks of his rights, prior to the line-up, and he signed a waiver and identified the same instrument which had been shown to the court and jury. Defendant's counsel stipulated it had already been read and shown to the jury. The defendant did not at any time request an attorney or anything. That these were the pictures of the line-up which he made, and were received in evidence and marked State's exhibit 4, 5, and 6. That Mr. Doremus identified Donald Brooks as the person who had robbed him.

On the question of the admissibility of the defendant's confession which is the basis of the first assignment of error the trial judge conducted a hearing out of the presence of the jury in which the defendant testified he was on narcotics. That at the time he gave his statement to the police he was under arrest on charges growing out of the kidnapping of the Olan Mills family. That prior to being arrested by the police on that particular case he had been using narcotics. That he had used narcotics about two years but in the form of shooting them in a syringe into his arm about one year. That the last fix he had before being arrested in the Olan

Mills case was about 5:00 or 5:30 that morning. That he was shooting Demerol. That he was in Mr. Mills car shooting narcotics. That he had a 30. cc bottle of liquid. He guessed he would average a shot in the veins of the arms every 20 or 30 minutes.

That subsequent to that he was arrested by the police and gave a statement to Chief Davis. That he did not have any shot before he gave the statement about the kidnapping. That Mr. Thomas gave him a bologna sandwich, he couldn't eat it because he could not hold anything on his stomach. He was having a pretty bad time. He was sick. Sometime that evening he started suffering from the lack of narcotics, it was right before dark. He had already given a statement in the kidnapping case.

That he spent the night in the City Jail, and did not get any sleep. He was sick and above that it was real hot in there, and then he knew two or three of the policemen there at the City Jail and they came back and kept wanting to know about this and that all through the night. The next morning he said he was really feeling bad.

Pete Davis told him the night before that he'd come over and see how he was the next morning. That they had talked about him being on narcotics and everything. And the next morning Chief Davis came and took him over. The defendant said he was in pretty bad shape and needed something cold to drink. Chief Davis bought the defendant two or three cokes but still it did not help him much. He told the defendant they had him for kidnapping, and he knew the defendant had been in different things and the defendant should go on and confess and tell about them, that they couldn't hurt him.

The defendant did not remember whether they had advised him of his rights before he made the statement about the kidnapping.

When the defendant was asked by his counsel if he remembered giving the statement to Detective Davis, he answered, "I know that I gave a statement. I don't know exactly what's, I can't remember what's there." He did not recall whether he was advised of his rights under the Miranda rule.

On cross-examination the defendant said he couldn't say he remembered signing two papers. When asked if he gave Chief Davis a statement about the robbery at Red Food

Store he answered, "I suppose I did he's got it down." He testified the officers did not threaten him or promise him anything. "He just promised me he'd try to get me something to eat, and make me, help me feel better."

Defendant's counsel asked the defendant if he considered himself an addict and he answered "Yes sir."

Chief Davis testified it was about 10:45 a.m. November 15 when the defendant started the statement that he first started talked to him about 10:30 a.m. The following is a statement signed by the defendant.

"YOUR CONSTITUTIONAL RIGHTS

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering questions at any time. You also have the right to stop answering questions at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure, force or coercion of any kind has been used against me."

/s/ Donald L. Brooks

Chief Davis testified that he had known the defendant all his life. That it was his understanding the defendant started on glue, that he said on the night of the kidnapping that he did take a shot of something and that when he was in New Orleans he was shooting morphine or heroin. When asked what the defendant's condition was when the Chief

talked to him Davis said, "Just like it is now, as far as I was concerned." That he had been in custody approximately 24 hours. That the defendant said he was suffering symptoms of withdrawal but Chief Davis could not say whether he was or not, that he did not seem particularly nervous or anything like that, at that time. That he gave a statement about the kidnapping on the day before. Chief Davis said, "He didn't appear to me to be going through any withdrawals. Of course he may have been on narcotics but he didn't appear to be going through any withdrawals." "My understanding, it's like tearing your limb off, or your arm, going through withdrawal and you hit your head against the wall and everything else. He was not in that condition."

Chief Davis testified they weren't "really questioning him. I was sitting there talking to Donnie like I would my own kid." Detective Outlaw witnessed the statement and the signing of the waiver.

Chief Davis said he did not recall the defendant complaining of being sick. That they let him use the telephone. Davis bought the defendant a coca cola. He did not have an attorney. He could have had an attorney, he didn't have to talk to them if he didn't want to, he knew that. He did not say he was too sick to know what he was doing. He could have called an attorney if he had wanted to, he used the phone. Defendant's counsel asked Chief Davis if he felt like this 19 years old boy with eleventh grade education fully understood this rights waiver that they had him sign and Chief Davis answered, "I think he did, yes sir."

After hearing evidence and argument of counsel on the admissibility of the confession, the trial judge overruled the defendant's objection or motion to suppress this evidence and held that the waiver and confession were competent and admissible.

The findings of the trial court upon questions of fact are conclusive and will not be set aside unless this court finds the evidence preponderates against the judgment of the trial judge. *Lawrence v. Henderson*, 433 S.W.2d 96; *State ex rel Hall v. Meadows*, 215 Tenn. 668, 389 S.W.2d 256; *Taylor v. State*, 180 Tenn. 62, 389 S.W.2d 256.

We hold that the trial judge was correct in his ruling and that the evidence does not preponderate against his finding.

In support of his second assignment of error and his

attack on the validity of the line-up the defendant has cited *Foster v. California*, 89 S.Ct. 1127 (1969) and quotes from it that "the police repeatedly said to the witness, 'This is the man'." No promptings or suggestions like that are shown in the case at bar. When Chief Cornish called the victim Mr. Doremus he told him they wanted him down to view the line-up that they had the man that held up the store. Mr. Doremus knew before he viewed the line-up that Brooks the defendant would be one of the six in it.

We think it is reasonable to conclude that a victim called to view a line up in an investigation of a robbery would naturally expect the suspect to be one of those in the line-up. In *Herman v. State*, 453 S.W.2d 421, relied on by the defendant, the witness was unable to identify the defendant in the line-up until after his wife had identified the defendant in the presence of the witness, in an office in the police station.

In the Herman case, the line-up question could not be considered because timely objection had not been made in the trial. Here the victim Doremus and his wife viewed the line-up separately, and Doremus identified the defendant Brooks and the wife of Doremus could not identify Brooks, but picked out another one in the line-up, but it was shown Mrs. Doremus at the time of the robbery was 30 feet away in a car in the parking lot, and did not have a good view of the robber.

The defendant Brooks contends in his motion for a new trial and in his assignment of error that the identification of the defendant by the victim Mr. Doremus was influenced by suggestive and prejudicial conduct of Detective Chief Cornish and that the line-up procedure was highly suggestive and tended to point toward the defendant.

About an hour after the robbery on the same night the victim, Mr. Doremus was shown some pictures which they said included Brooks and at that time Mr. Doremus was unable to pick him out. He was also shown other pictures which did not include Brooks and a line-up which did not include Brooks. He did not pick anyone out in any of them. The victim said at that time he was still nervous and wanted to make sure.

It is well to remember there is no evidence that the victim ever identified any other person as the robber. It is

true he was shown a group of pictures which they said included Brooks and he was unable to identify the picture, but this was about an hour after the robbery when the victim was still nervous from the harrowing ordeal he had experienced.

Mr. Doremus had a good opportunity to observe the criminal act when the defendant stood within two feet of him with a pistol drawn demanding the money, snatched up part of the money and Mr. Doremus gave him part of it, and saw the defendant make his getaway out the front door of the store. Although the victim was not specifically asked on what he based the identification, we think it is clear that he could have said it was upon his observation of the defendant during the criminal act, in fact that is all he had to go on.

The defendant also relies on *Greer v. State*, 443 S.W.2d 681 where the judgment was reversed because one of the defendants was not represented by counsel at the line-up. In the case at bar, the defendant Brooks waived the presence of counsel at the line-up. No question of the lack of counsel was made in the trial court or here.

While it is true, as held in the *Wade and Gilbert* cases, that the line-up is a critical stage of the criminal proceedings, its importance is lessened by the fact that in the case at bar the confession of guilt by the defendant was the real basis of the jury's verdict of guilty. We think the fact that the conviction is predicated upon evidence independent of the line-up identification, does not bring the case within the rule laid down in the *Wade and Gilbert* cases.

We find no evidence of any effort on the part of Detective Cornish, or on the part of any other person, to influence Mr. Doremus the victim, in making his identification of the defendant Brooks.

We are of the opinion the line-up was fair and that no rights of the defendant were violated.

Assignment number 2 is overruled.

Responding to assignment 3, which complains that the court committed error in ruling that if the defendant desired to testify he must do so before any other testimony for the defense is heard by the court trying the case.

The ruling of the court is supported by *T.C.A. 40-2403*, *Rayland v. State*, 86 Tenn. 472 and *Clemons v. State*, 92

Tenn. 282. This is the law in Tennessee now and it is our duty to follow it until our Supreme Court holds to the contrary. The assignment is overruled.

The defendant's fourth assignment of error, is that the trial judge should have given the defendant's special request that

"If you have a reasonable doubt upon all the proof, as to whether the defendant has been identified as the person who was present and committing the offense, it will be your duty to acquit him."

The trial judge gave a full and clear charge to the jury which taken as a whole was adequate and sufficient. Upon the particular part of the charge mentioned in the defendant's special request the court said to the jury:

"In any of these offenses you must, upon all the proof, be satisfied beyond a reasonable doubt of all the elements of the offense before you can convict the accused, * * * usually in a robbery case, the question of identity of the person or persons doing the robbery is an important matter for consideration by the jury. In reaching a conclusion as to whether the identity of the accused has been established to your satisfaction beyond a reasonable doubt, you will, in addition to the other rules given to you for judging the credibility of witnesses and the weight of the evidence, observe the following rules. You will look to all the circumstances and conditions under which the witness or witnesses claim to have seen the accused, whether day or night; whether the opportunities for observation were good or bad; whether the perceptions of the witness or witnesses seem to be quick and accurate or otherwise. You will also look into and take into consideration whether there are or are not any corroborating facts and circumstances related by other witnesses. The identity of the accused and the connection of the accused with the crime must be established to your satisfaction beyond a reasonable doubt."

The assignment is overruled.

The fifth assignment of error challenges the sufficiency of the evidence, the defendant's insistence is that it preponderates against the verdict of the jury and in favor

of his innocence. In reviewing the evidence under these assignments, we are bound by the rule, that a jury's verdict of guilt, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in the evidence in favor of and establishes the State's theory of the case. Under such a verdict, the presumption of innocence which the law accords an accused prior to conviction, disappears and is replaced by a presumption of guilt which puts upon him the burden of showing upon appeal that the evidence preponderates against the verdict and in favor of his innocence. We may review the evidence only to determine whether it preponderates against the verdict and in doing so, we must take the verdict as having established the credibility of the State's witnesses. The verdict will be disturbed on the facts only if the evidence clearly preponderates against it and in favor of the innocence of the accused. *Leach vs. State*, 220 Tenn. 526, 420 S.W.2d 641; *Gulley v. State*, 219, 114, 407 S.W.2d 186; *Jamison v. State*, 220 Tenn. 280, 416 S.W.2d 768; *Webster v. State*, — Tenn. Crim. App. —, 425 S.W.2d 799; *Brown v. State*, Tenn. Crim. App. —, 441 S.W.2d 485.

The evidence does not preponderate against the verdict. The assignment is overruled.

We commend court appointed counsel for the able representation he has given the defendant in this case.

The judgment is affirmed.

/s/ JOHN A. MITCHELL, *Judge*

CONCUR:

/s/ WILLIAM S. RUSSELL, *Judge*

THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

DECEMBER, 1970

DONALD L. BROOKS,
Plaintiff in Error

vs.

STATE OF TENNESSEE
Defendant in Error

No. 205
Hamilton County

DISSENTING OPINION

It is settled law in this state, and under decisions of the Supreme Court of the United States, that a confession taken from a person suffering from the effects of narcotic or alcoholic withdrawal symptoms to such an extent that he is shorn of his volition is not admissible in evidence against him. See *Vandergriff vs. State*, 219 Tenn. 302, 409 S.W.2d 370; *Shannon v. State*, 221 Tenn. 412, 427 S.W.2d 26; *Townsend v. Sain*, 372 U.S. 293, 83 S.Ct. 745; and, of course, *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602. In this case the assistant Chief of Detectives, who had known the defendant all his life and was familiar with the history of his addiction to narcotics sufficiently corroborated the defendant's testimony that he had been deprived of drugs throughout a hot and sleepless night to such an extent that I am convinced the evidence preponderates against the finding of the trial judge that the confession taken by Chief Davis was a voluntary product of the free will of the defendant.

Although Chief Davis testified he did not recognize any of the symptoms of drug withdrawal at the time he took the confession, he said he knew it affected an addict like "tearing your limb off, or your arm . . ." I believe we must take judicial notice that if, as Chief Davis said, this defendant was a confirmed addict who had been locked away from medication over night, his physical and mental condition had to be in such a state of deterioration that he could not function normally and exercise that degree of choice necessary to effect a waiver of the rights that were

explained to him while in that condition. As our Supreme Court said in *Vandergriff, supra*, a case in which the defendant was under the influence of alcohol when he made the statement:

"It cannot be doubted, on this record, that at the time of these inculpatory statements, the defendant had, in substantial part at least, been shorn of his volition. His statement could not have been 'the product of a free intellect.'"

I believe the record before us as fairly summarized by Judge Mitchell in the majority opinion pictures a person much less in control of his body and mind than was *Vandergriff*. If nothing else the widely discussed and troublesome "drug culture" of late so prevalent in our society has taught all of us that narcotics reduce a human being to less than a rational and intellectually guided person, and that the sudden isolation of a person addicted to a heavy daily dosage of drugs leaves him in a pitiful state in which he will resort to almost any course of action he feels will afford him relief.

Without belaboring the point, I believe the evidence establishes that the confession was induced by the defendant's reaction to prolonged drug usage and his sudden withdrawal from same, and I must respectfully dissent from the holding of the majority to the contrary.

/s/ CHARLES GALBREATH
Judge

COURT OF CRIMINAL APPEALS OF TENNESSEE,
AT KNOXVILLE

[Filed May 5, 1971]

DONALD L. BROOKS
VS. (No. 118061)
STATE OF TENNESSEE

No. 205, Hamilton County
Offense: Armed Robbery
AFFIRMED

JUDGMENT

Came the plaintiff in error, DONALD L. BROOKS, by counsel, and also came the Attorney General on behalf of the State, and this cause was heard on the transcript of the record from the Criminal Court of Hamilton County; and upon consideration thereof this Court is of opinion that there is no reversible error on the record and that the judgment of the Court below should be affirmed, and it is accordingly so ordered and adjudged by this Court.

It is, therefore, ordered and adjudged by this Court that the plaintiff in error, for his offense of Armed Robbery be delivered to the Warden of the penitentiary, or his agent, and be by him committed to the penitentiary of the State of Tennessee and there confined at hard labor for a term of not more than Ten (10) years, and not less than Ten (10) years, commencing on the day of his reception at said penitentiary.

The sentence of imprisonment will be credited with the time the plaintiff in error spent in jail pending this appeal. The number of days of such confinement will be certified to the Warden by the Clerk of the Court below.

It is further ordered by the Court that plaintiff in error be infamous and disqualified from holding any office under this State, or exercising the elective franchise.

The plaintiff in error will pay the costs of the cause accrued in this Court, and in the Court below, and execution may issue from this Court for the costs of the appeal. A procedendo will issue to the said Criminal Court of Hamilton County, directing that Court to proceed with the collection of the costs of the cause accrued therein in the manner provided by law.

The Clerk of this Court will issue a duly certified copy

of this judgment to the Sheriff of Hamilton County, which will be his authority for delivering the plaintiff in error to the Warden or his agent; and also a duly certified copy hereof to the Warden of the penitentiary, who will at once proceed to execute this judgment.

JOHN A. MITCHELL
WILLIAM S. RUSSELL

FELONY—Affirmed (Infamous)

COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

DONALD L. BROOKS
-vs- (No. 118079)
STATE OF TENNESSEE

No. 205, Hamilton County
Offense: Carrying a Pistol
AFFIRMED

JUDGMENT

Came the plaintiff in error, Donald L. Brooks, by counsel, and also came the Attorney General on behalf of the State, and this cause was heard on the transcript of the record from the Criminal Court of Hamilton County; and upon consideration thereof this Court is of opinion that there is no reversible error on the record and that the judgment of the Court below should be affirmed, and it is accordingly so ordered and adjudged by this Court.

It is, therefore, ordered and adjudged by the court that the State of Tennessee recover of Donald L. Brooks the plaintiff in error, for the use of the County of Hamilton, the sum of \$50.00, the fine assessed against _____ in the Court below, together with the costs of the cause accrued in this Court and in the Court below, and execution may issue from this Court for the costs of the appeal.

It is further ordered by the Court that the plaintiff in error be confined in the county jail or workhouse of Hamilton County, subject to the lawful rules and regulations thereof for a term of Eleven Months & 29 days and that after the expiration of the aforesaid term of imprisonment he remain in the custody of the Sheriff of Hamilton County, until the said fine and costs are paid, secured or worked out in the manner required by law; and this cause is remanded to the Criminal Court of Hamilton County for the execution of this judgment. This case to run consecutively to sentence in case No. 118061.

The sentence of imprisonment will be credited with the time the plaintiff in error spent in jail pending this appeal. The number of days of such confinement will be credited to the Sheriff by the Clerk of the Court below.

/s/ JOHN A. MITCHELL

/s/ WILLIAM S. RUSSELL

COURT OF CRIMINAL APPEALS DOCKET ENTRIES

DONALD L. BROOKS

-vs-

THE STATE

Court of Criminal Appeals
Hamilton County
No. 205

Hamilton County Criminal Court No. 118601—Armed Robbery

Hamilton County Criminal Court No. 118079—Carrying Pistol

May 14, 1970

—Transcript of the Record filed, 3 volumes—6 exhibits

Attorneys: For Brooks—Hon. Jerry Summers
For State—Hon. Tom Fox,
Ass't. Attorney General

June 10, 1970

—Motion to Allow Time to file Assignments of Error

June 10, 1970

—Order allowing 60 days to file Assignments of Error

Sept. 3, 1970

—Assignments of Error and Brief filed by Jerry Summers

Sept. 17, 1970

—Reply brief by Assistant Attorney General Fox

December 8, 1970

—Submitted to Court on Briefs

May 5, 1971

—Affirmed by Court of Criminal Appeals

Aug. 20, 1971

—Motion to Stay Judgment by Summers

Aug. 20, 1971

—Stay Order

Aug. 20, 1971

—Notice intent to File Certiorari to the United States Supreme Court

SUPREME COURT OF TENNESSEE AT KNOXVILLE

[Filed Aug. 16, 1971]

JOHN A. PARKER, *Clerk*

DONALD L. BROOKS

-VS-

STATE OF TENNESSEE

} Hamilton Criminal
WRIT DENIED.

This case coming on to be heard upon a transcript of the record from the Criminal Court of Hamilton County, opinion and Decree of the Court of Criminal Appeals, petition for certiorari, assignments of error and briefs of counsel, upon consideration whereof the Court is of opinion that the petition for writ of certiorari is not well taken, and said petition is denied.

The petitioner, Donald L. Brooks will pay the costs incident to filing petition for certiorari, for which let execution issue.

ROSS W. DYER, J.

LARRY CRESON, J.

GEORGE F. MCCANLESS, J.

IN THE SUPREME COURT OF THE STATE OF
TENNESSEE

DONALD L. BROOKS,
Appellant,

vs.

STATE OF TENNESSEE,
Appellee

No. 205
Hamilton County

NOTICE OF PETITION OF WRIT OF CERTIORARI TO THE UNITED
STATES SUPREME COURT FROM A JUDGMENT OF THE SUPREME
COURT OF STATE OF TENNESSEE

[Filed August 20, 1971]

Notice is hereby given that Donald L. Brooks, the appellant above named, appeals to the United States Supreme Court from the final Order of August 16, 1971 affirming appellant's judgment of conviction entered therein.

This appeal is taken pursuant to 28 U.S.C.A., Section 1257.

Appellant was convicted of the crimes of Armed Robbery and Carrying a Pistol, in violation of Tennessee Code Annotated, Section 39-3901 and 39-4901, was sentenced to ten (10) years in the State Penitentiary and eleven (11) months, twenty-nine (29) days in the County Workhouse respectively and is presently confined at the State Penitentiary in Nashville, Tennessee.

/s/ JERRY H. SUMMERS

Attorney for Appellant
206 Professional Building
Chattanooga, Tennessee

SUPREME COURT CERTIORARI DOCKET ENTRIES

DONALD L. BROOKS

vs.

STATE OF TENNESSEE

} Hamilton County
Court of Criminal Appeals
No. 205

June 17, 1971—Writ of Certiorari filed by Jerry H. Summers

June 17, 1971—Notice Waived

June 17, 1971—Petition filed

June 17, 1971—Assignment of Error and Brief by Jerry H. Summers

June 22, 1971—Reply Brief of State to Petition for Writ of Certiorari by Ass't. Attorney General Fox

Aug. 16, 1971—Petition for Writ of Certiorari Denied by Tennessee Supreme Court.

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

DONALD L. BROOKS,
Plaintiff in Error

STATE OF TENNESSEE,
Defendant in Error

No. 205
Hamilton County

ORDER

Upon motion of the plaintiff in error, Donald L. Brooks, he is hereby granted a stay of execution of the judgment of this Court rendered on May 5, 1971, for a period of ninety days pending the filing of and disposition of a petition for the writ of certiorari to the Supreme Court of the United States, his petition for writ of certiorari to the Supreme Court of Tennessee having been denied on August 16, 1971.

The Clerk of this Court will issue a duly certified copy of this Order to the Clerk of the Criminal Court and to the Sheriff of Hamilton County.

Enter this 20th day of August, 1971.

/s/ W. WAYNE OLIVER, *Judge*

SUPREME COURT OF THE UNITED STATES

No. 71-5313

DONALD L. BROOKS, *Petitioner*,

v.

TENNESSEE

On petition for writ of Certiorari to the Court of Criminal Appeals of the State of Tennessee.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted limited to Question III and IV presented by the petition which read as follows:

“III. The trial court was in error in refusing to allow defendant to be placed on the witness stand after other witnesses had testified in his behalf as said Tennessee Statute requiring defendant to be first witness is unconstitutional in violation of the Fifth Amendment and Fourteenth Amendment of the Federal Constitution and Article I, Section 9 of Tennessee Constitution.

“IV. Code section 40-2403 deprives a defendant of due process of law, in violation of the Fourteenth Amendment to the United States Constitution.”

